

BEFORE THE ARBITRATOR

In the Matter of the Final and Binding Interest Arbitration Dispute between

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,
LOCAL UNION 965

and

CITY OF CUBA CITY

WERC Case No. 67444, Int/Arb - 11028
Decision No. 32346-A

Appearances:

Mr. Tony Bartels, Business Manager, International Brotherhood of Electrical Workers Local Union 965, 1602 S. Park St., Room 220, Madison, WI 53715, appearing on behalf of the Union.

Stephen R. Buggs, Esq., 55 E. Main St, Platteville, WI 53818, appearing on behalf of the City.

ARBITRATION AWARD

The Union has represented a bargaining unit of craft employees at the Cuba City Electric and Water Utility since 2006; this matter concerns an initial collective bargaining agreement. On November 12, 2007, the Union filed a petition with the Wisconsin Employment Relations Commission requesting arbitration with respect to the parties' initial collective bargaining agreement. Following mediation by a member of the Commission's staff, the Commission determined by order dated February 5, 2008 that arbitration was required. The undersigned was appointed by Commission order dated March 3, 2008.

A hearing was held in Cuba City, Wisconsin on April 15, 2008, at which time the parties were given full opportunity to present their evidence and arguments. Both parties elected to waive briefs and to argue orally, and the record was closed on April 15, 2008.

Statutory Criteria to be Considered by Arbitrator
Section 111.70 (4) (cm) 7

7. 'Factor given greatest weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give the greatest weight to any state law or directive lawfully issued by a state legislative or administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer. The arbitrator or arbitration panel shall give an accounting of the consideration of this factor in the arbitrator's or panel's decision.

7g. 'Factor given greater weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd. 7r.

7r. 'Other factors considered.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall also give weight to the following factors:

- a. The lawful authority of the municipal employer.
- b. Stipulations of the parties.
- c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
- d. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.
- e. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes generally in public employment in the same community and in comparable communities.
- f. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes in private employment in the same community and in comparable communities.
- g. The average consumer prices for goods and services, commonly known as the cost of living.
- h. The overall compensation presently received by the municipal employes, including direct wage compensation, vacation, holidays and excused time, insurance and

pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

I. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

j. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

The Union's Final Offer

Wages:

Wage effective:	1/1/2007	1/1/2008
Lead Line Tech (Melvin):	\$25.32	\$26.08
Journeyman Line Tech (Roger):	\$22.65	\$23.33
Line Apprentice 4 th Year:		95%
Line Apprentice 3 rd Year:		90%
Line Apprentice 2 nd Year:		85%
Line Apprentice 1 st Year:		80%

The Employer's Final Offer

Wages:

2007:

Melvin (Kreul):	\$24.16/hour
Roger (Helbing):	\$17.49/hour

2008:

Melvin:	\$24.76/hour
Roger:	\$18.89/hour

The Union's Position

The Union argues that the electrical line workers organized because the wages were not fair, noting that the parties have been able to reach agreement on all other issues. The

Union argues that the most recent pay increase, of \$.28 an hour in 2006, was clearly inadequate, as is the \$.34 offered by the City for 2007.

With respect to the comparables, which are not established, the Union notes that it submitted both a broad group of municipally owned electric utilities located within 100 miles of Cuba City, and a narrowed list within 70 miles. The Union takes exception to management's inclusion of Algoma, New Holstein and Whitehall on the grounds that these municipalities are far beyond a reasonable distance from Cuba City, and questions the completeness of the City's list on the grounds that various much closer utilities are not included. The Union argues that its list is more consistent.

With respect to the rates compared against, the Union argues that it has provided contracts for all Unionized municipalities in its table as backup to its wage calculations, which management has not done, and notes that the municipalities the Union is arguing for is a comparable are all smaller than the largest municipality in the City's table; but the Union argues for exclusion of the nonunion utilities because without the documentation provided by a contract, it is difficult to tell exactly what a worker's job really is. But the Union argues that even City Exhibit 1 demonstrates that the employees the Union represents here are underpaid. The Union argues that there is no ability to pay issue, based on the revenue figures in its exhibits.

With respect to the lead line technician, the Union argues that Kreul's responsibility exceeds that of the higher classification in several of the comparables, because those units are supervised by management personnel who are qualified in electrical work, unlike the superintendent of public works in Cuba City, who has no electrical qualifications. The Union notes that it is clear that even when the job involved requires bringing in additional electricians from cooperating utilities, Kreul is in charge of the overall job.

In response to the employer's initial arguments, the Union replied that contrary to management's argument that Helbing is employed only part-time as electrician, Helbing's other work is not that untypical of electricians in small electric utilities owned by municipalities, and that employees in the lower rated jobs commonly spend significant time snowplowing and doing other lower rated work. The Union argues that nothing in the comparables demonstrates Helbing as being appropriately paid, and that while the Employer is using the top rate in its calculation of the comparables, many of them have an electric superintendent, so that the top bargaining unit employee has less responsibility than Kreul. The Union argues that in Muscoda, there is an electric superintendent who also does line work, as well as an apprentice, and that all of them perform snowplowing when it is needed, the same as in New Glarus.

The Employer's Position

The City contends that the employees have been taken care of quite well under its wage structure, arguing that the Union's own Exhibit 13 shows that Helbing's rate in 2000 was \$13.00 per hour when he began his apprenticeship, so that it has gone up significantly. The City argues that it has shown flexibility, noting that it agreed to split over two years the backpay owed to Helbing several years ago because he was underpaid in terms of the State

of Wisconsin-required apprenticeship wage schedule, at the employee's request for tax reasons.

With respect to the comparables, the City notes that it has included a number of municipal electric utilities in its proposed comparables list which are larger than some of the ones used by the Union, and that it is clear that the City did not pick its proposed comparables to demonstrate the lowest possible rates. The City argues that New Glarus pays almost identically to the City's proposal at the top rate, while Shullsburg and Black Earth pay less even though both have only one electrician, who must logically be capable of doing everything needed. Evansville and La Farge, the employer notes, also pay lower rates than the City is proposing. Even Muscoda and Fennimore, both of which are relatively nearby and are Unionized, pay less in the City's calculation than the City proposes for the higher rated employee (the City notes that if the Union's calculation is accepted, Fennimore is still within \$0.10). The City also argues that Hazel Green, Elroy, Whitehall, and Pardeeville all pay the same or less as the City is offering.

The City argues that the Union has used the wrong titles for both employees, and that there is no need for rates to be specified for apprentices which the City has no intention of hiring. The City argues that there is no dispute as to the level of Kreul's responsibility, but there is overall supervision of the utility by the public works superintendent, and that while Helbing's rate is "on the low side", this takes into account that he is not a full time electric lineworker. The City argues that the municipality simply does not need him full-time as electrician, and that this has to be factored in, because he also does snowplowing and wastewater treatment plant work which must be a factor in what the City can pay him.

In reply to the Union's arguments, the City argues that the one employee in the bargaining unit in Fennimore has a 2008 rate of \$23.27, where the City is offering \$24.76, and that nothing in the Fennimore contract says the employee can be assigned work other than electric work. The City also argues that in Muscoda, the current rate is also less than the City is offering for the one worker, and that nothing in the collective bargaining agreement there says anything about him performing work other than electric work. (The City notes that it is relying on its own survey, not on the union contracts, as to the number of employees in each location.)

Discussion

It is appropriate to note first that the economic evidence in the record clearly supports the conclusion that the City can afford either offer. The municipal electric utility runs a moderate surplus in most years (in the sole exception of the record, there was testimony that the utility had elected to buy extra transformers that year), but the surplus is much more than the amount in dispute, and the City runs it without charging electric rates that appear out of line with other municipally owned utilities in the area. See Table 1 below.

The primary issue is what rates should be set at the outset of the first contract, where the parties are obviously far apart. For 2008, by contrast, the Union's proposal amounts to a 3% increase for both classifications; the City's proposal (not stated in terms of classifications) amounts to 2.5% for Kreul and 8% for Helbing. I do not find the difference in the terminology used, or the Union's proposal to incorporate a rate schedule for apprentices in case the City hires one, to be material elements either way in determining which offer is more appropriate.

There has never been a bargaining unit of any kind with the City, and consequently there is no history as to comparables. To their joint credit, both parties offered comparables essentially without any effort to "stack the deck." I find that the Union's list, however, is better documented (based on Public Service Commission data and labor agreements which are in the record) than the City's, which is based on a survey by telephone and on maps drawn to reflect membership in a trade association, Municipal Electric Utilities of Wisconsin (MEUW). Not all municipal electric utilities seem to be members, and the data generated by the Association are apparently not public. Within the Union's larger database, I accept the Union's argument that utilities within 70 miles are more appropriate as a comparison, and beyond that I also find that the Union's proposal to concentrate on the utilities which are within eight places of Cuba City smaller, and eight larger, is a well-reasoned approach.

While the Union's list of wages excludes the non-union bargaining units, this is common practice. Under certain circumstances it can distort the real picture, but I do not find that it does so here. In particular, the four smallest nonunion municipal utilities noted by the Union (Argyle, Wonewoc, Belmont and Cashton) are not included in the City's list anyway. Nor are several of the larger nonunion municipals found by the Union. It is worth noting that of the remainder of the nonunion municipals within 100 miles of Cuba City, according to the City's information Hazel Green pays \$17.97 and \$22.23 per hour respectively to its two line workers, Elroy pays \$19.09 for 2008 for its sole line worker, Boscobel pays two line workers \$22.23 and \$22.73 respectively, and Columbus pays \$27.50 to its four line workers — more than the Union is seeking, but Columbus is twice the size of Cuba City. In short, in this instance, including what is known about the nonunion utilities would make little overall difference in a comparables table.

The list of comparables in Table 1 is taken from Union Exhibit 10. In a few instances, I note that the City's survey has produced somewhat different numbers than those shown; I rely here on the Union's numbers because they are supported by the actual contracts in the record, with the following exceptions, noted in the table by asterisks:

1. The Shullsburg contract for 2005 – 2007, Union Exhibit 16, shows a “Lineman 2”, paid \$16.24 in 2007. It does not show 2008 rates. This suggests that Lineman 1 is really the equivalent of the Foreman in Table 1, and Lineman 2 should be put in the Lineman column. The effect is to move the average for both rates; along with the other changes which follow, the effect is shown in Table 2.

2. The Westby contracts, Union Exhibit 20, indicate that the Union has used 2006 rates for 2007 and 2007 rates for 2008. The contracts show these rates as \$23.30, \$24.80, \$25.00, and \$27.00 respectively.

3. In Lodi, Union Exhibit 25 shows the marked rate unchanged for 2008, at \$29.41. Although this could be a typographical error, for consistency I have used that rate in Table 2.

Table 1

Utility Name	07 Lineman	08 Lineman	07 Foreman	08 Foreman	population	Miles	Bill @ 600 KWH
La Farge Municipal Electric Utility	\$16.00	\$16.50	NA	NA	775	70	\$47.99
Shullsburg Electric Utility*	\$20.04	\$20.59	NA	NA	1246	13	\$44.85
Bangor Municipal Utility	\$26.13	\$26.91	NA	NA	1400	95	\$64.98
New Lisbon, City of Elec & Water Utility	\$28.05	\$29.03	\$28.03	\$29.53	1436	91	\$44.04
Muscoda Light and Water Utility	\$21.00	\$21.50	\$23.00	\$23.60	1453	43	\$54.23
Pardeeville Light and Water	\$20.01	NA	NA	NA	1982	85	\$49.69
Westby, City of Muni Elec & Wtr Utility*	\$22.51	\$23.30	\$23.96	\$24.80	2045	78	\$54.48
New Glarus Light and Water Works	\$22.80	\$23.54	\$24.19	\$24.98	2111	46	\$64.59
Cuba City					2156		\$54.96
Fennimore Water and Light Plant	\$22.73	\$23.37	\$25.13	\$25.77	2387	31	\$43.38
Wisconsin Dells Mun Electric Utility	\$21.86	\$25.38	\$22.98	\$26.50	2418	81	\$43.34
Black Earth/Mazomanie (Vanguard Electric	\$23.76	\$24.53	NA	NA	2805	52	\$58.61
Lodi Mun Light and Water Utility	\$27.33	\$27.88	\$29.41	\$30.00*	2882	70	\$59.88
Sauk City Mun Water and Light Utility	\$23.76	\$24.76	\$24.76	\$25.76	3109	60	\$53.34
Brodhead Water and Light Commission	\$25.31	\$26.07	\$25.81	\$26.57	3180	55	\$59.43
Prairie du Sac Mun Electric & Water	\$24.21	\$25.00	\$25.46	\$26.25	3231	60	\$56.37
Evansville, City of Water & Light	\$22.10	NA	\$23.78	NA	4039	62	\$54.07

Removing from the above table the utilities located more than 70 miles from Cuba City, adding the assumption that the 2008 raise for Lineman 2 in Shullsburg was 2.75% (the same as Lineman 1), and adjusting the numbers per the corrections noted above, produces the following:

Table 2

Utility Name	07 Lineman	08 Lineman	07 Foreman	08 Foreman	populati on	Miles	Bill @ 600 KWH
La Farge Municipal Electric Utility	\$16.00	\$16.50	NA	NA	775	70	\$47.99
Shullsburg Electric Utility	\$16.24	\$16.69	\$20.04	\$20.59	1246	13	\$44.85
Muscoda Light and Water Utility	\$21.00	\$21.50	\$23.00	\$23.60	1453	43	\$54.23
New Glarus Light and Water Works	\$22.80	\$23.54	\$24.19	\$24.98	2111	46	\$64.59
Cuba City					2156		\$54.96
Fennimore Water and Light Plant	\$22.73	\$23.37	\$25.13	\$25.77	2387	31	\$43.38
Black Earth/Mazomanie (Vanguard	\$23.76	\$24.53	NA	NA	2805	52	\$58.61
Lodi Mun Light and Water Utility	\$27.33	\$27.88	\$29.41	\$29.41	2882	70	\$59.88
Sauk City Mun Water and Light Utility	\$23.76	\$24.76	\$24.76	\$25.76	3109	60	\$53.34
Brodhead Water and Light Commission	\$25.31	\$26.07	\$25.81	\$26.57	3180	55	\$59.43
Prairie du Sac Mun Electric & Water	\$24.21	\$25.00	\$25.46	\$26.25	3231	60	\$56.37
Evansville, City of Water & Light	\$22.10	NA	\$23.78	NA	4039	62	\$54.07

AVERAGE

\$22.29 \$22.98 \$24.62 \$25.37

Although as it happens, in the table above more of the communities removed are smaller than Cuba City than larger, if they were left in the overall rates would actually be higher, because two of them pay very well.

The Employer, of course, has not argued particularly for a comparables list drawn only from the closest municipalities. But municipalities approaching a hundred miles from a town as small as Cuba City are not often found to be closely comparable, especially when there is a reasonable list within a more restricted distance. Accordingly, I will rely primarily on the "70 mile" table. This shows that with respect to the senior worker, Kreul, the City's proposal is closer to the average for both years. The more influential issue, however, is the much larger gap between the parties with respect to the junior line worker, Helbing. This reflects an apparent difference in how they view his role.

The record shows that Helbing was already employed by the City DPW as a laborer when it was proposed that he become a qualified electrician, via the State of Wisconsin apprenticeship system. The City agreed, and four years later, he passed his apprenticeship. During that time his wages rose from \$13.00 per hour to \$17.15 (with a bump at one point when a City underpayment, in terms of the State's required apprentice wage progression, was corrected.) The 2006 rates for the other employees and managers of the City are in the record, as Union Exhibit 14. These show that by 2006, the Wastewater Operator was paid \$17.10; the Water Operator was paid \$16.18; and two laborers were paid \$11.44 and \$15.10 respectively. It is clear that the City's conception of Helbing's work is that he is still regarded as somewhat tied to non-electrical work, both because he is the regular replacement for the wastewater treatment operator (work in which Helbing is also qualified) and because he is used for snowplowing and similar work when that is needed more than electrical work. It appears that the City is seeing something of an equivalency between Helbing and the wastewater operator, more than an equivalency between Helbing's work and Kreul's.

The City's argument is not a trivial one. What employees actually do is more important in setting their rates than their job title, or even their self-image. And the record, as well as the written job descriptions, does show a clear distinction between the multiple assignments regularly given to Helbing and the much more electric-focused role of the senior lineman.

But proportions also matter. And here, Helbing's testimony that 80 to 90% of his work was electric work was not contradicted by the management witness. The argument was also offered by the Union's business agent, though not in the form of formal testimony, that in the small municipally-owned electric utilities whose employees the Union represents in a number of places in Wisconsin, it is common practice for electrical workers to perform other work such as truck driving and snowplowing when that is needed more than their specialty. This has a general ring of believability, although the record is far from rock-solid.

At the same time, with the parties so far apart and with no prior history of collective bargaining, it is important to be as precise as possible in defining exactly what standards are used. I therefore find it appropriate to the circumstances, as a measure of Helbing's multiple functions, to go somewhat beyond the usual calculations and attempt a weighted calculation that takes into account his other functions.

As a practical matter in the absence of detailed testimony, I will assume that his non-electrical work during the year, if an employee were to be specially employed for each element of that work, is roughly 50% similar to the wastewater operator and 50% similar to the higher-rated laborer. That would generate an average "benchmark" rate for his non-electrical work, in 2006, of \$16.10. Adding the \$.34 per hour in the City's proposal for 2007 generates \$16.44 as a comparison rate for that year.

The lowest percentage of electrical work performed by Helbing that the record will support is, as noted above, 80%. If the average 2007 lineman rate of \$22.29 in Table 2 above is given 80% weight, and the \$16.44 rate is given 20% weight, the result, while fictitious, at least provides some way to take into account the widely varying work involved. That calculation generates the abstract but instructive figure of \$21.12.

It is evident that even using such a calculation, the Union's \$22.65 proposal remains much closer to that blended figure than the City's \$17.49 proposal. The equivalent remains true in 2008 even after the City's proposed raise of 8% for Helbing. At the same time, the Union's proposal for the senior lineworker exceeds the average by \$.70 in 2007 and \$.71 in 2008, while the City's proposal is below the average by \$.46 and \$.61 respectively. The marginal difference is \$.24 in 2007 and \$.10 in 2008, a factor in favor of the City's final offer. But this is far overshadowed by the calculation above, which leaves the City short by several dollars an hour in its offer for the junior employee. Even ignoring for purposes of this discussion the Union's representation that lineman rates in other comparable utilities already take into account those employees spending some of their time snowplowing and doing other non-electric work, the Union's proposal overall remains much closer to the average of the comparables. Accordingly, no substantive basis remains for finding the City's proposal more reasonable.

The Statute's Weighing:

The "greatest weight" and "greater weight" factors were not significant in the context of a municipally-owned electric utility which is not supported significantly by tax revenue. The lawful authority of the municipal employer, the stipulations of the parties, the cost of living index, the overall compensation of the employees, changes during the proceedings, and other traditional factors were not argued. The interests and welfare of the public are neutral, as the money savings from the City's proposal are offset by the sheer size of the difference in the offers and consequently the presumed increased risk of losing a painstakingly-trained craft employee to a significantly higher paying utility elsewhere, and the City has the financial ability to meet the costs of either proposal. Comparisons to employees in private employment were not argued. And a balanced comparison between all of the functions given to both line workers, taking into account internal rates for nonunion employees who perform a percentage of the same functions as one of the line workers as well as rates paid to electrical line workers in other municipalities, favors the Union's proposal.

Summary

Even going to some lengths to give attention to the City's argument that the junior line worker is not a full-time electrician, the City's numbers come up short. The proposals for the senior line worker are much more balanced. A strong case could be made that the parties should have settled in between their proposals, but closer to the Union's, especially for the junior lineworker. Under the statute, however, an arbitrator is obviously required to select one offer in its entirety. Here, the Union's offer is clearly closer to the mark.

AWARD

That the final offer of the Union shall be included in the 2007-2008 collective bargaining agreement.

Dated at Madison, Wisconsin this 21st day of May, 2008

By _____
Christopher Honeyman, Arbitrator